No. 11-8020

In the United States Court of Appeals for the Eighth Circuit

MARCY A. JOHNSON
Plaintiff and Respondent

VS.

WEST PUBLISHING CORPORATION
Defendant and Petitioner

WEST PUBLISHING CORPORATION'S PETITION FOR AN INTERLOCUTORY APPEAL PURSUANT TO 28 U.S.C. § 1292(b)

From an Order Denying a Motion For Judgment on the Pleadings,
Certified for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b),
by the United States District Court for the Western District of Missouri
No. 2:10-CV-04027 NKL
The Honorable Nanette K. Laughrey

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

OTHER AUTHORITIES

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, West Publishing Corporation, through its undersigned counsel, hereby states that it is a non-public corporation that is wholly owned by its parent company, Thomson Reuters Corporation. There are no intermediate parent corporations or subsidiaries of West Publishing Corporation that are publicly held. Thomson Reuters Corporation, which ultimately owns 100% of the stock in West Publishing Corporation, is a publicly held corporation traded on the New York Stock Exchange and Toronto Stock Exchange.

DATED: August 29, 2011

Respectfully submitted,

REED SMITH LLP

By: */s/ Kim M. Watterson*

Kim M. Watterson
Attorneys for Defendant and Petitioner West Publishing Corporation

I. PRELIMINARY STATEMENT AND REASONS TO GRANT THIS PETITION

This petition seeks interlocutory appellate review of a district court order denying West Publishing Corporation's ("West") motion for judgment on the pleadings in an action under the Driver's Privacy Protection Act ("DPPA" or "Act"), 18 U.S.C. §§ 2721, *et seq*., asserting claims for upwards of $2.5 trillion in statutory damages on behalf of millions of drivers in 29 states and the District of Columbia.[1] The district court's conclusion that Plaintiff has stated a cognizable DPPA claim is based on an interpretation of the Act that is unique among the federal appellate and district courts. (*See infra* at pp. 13-17). Indeed, even another judge in the same federal district has dismissed a putative DPPA class action based on allegations that mirror the claims asserted against West. *Cook v. ACS State & Local Solutions, Inc.*,756 F. Supp.2d 1104 (W.D. Mo. 2010). An appeal from the dismissal order in *Cook* is pending before this Court at No. 10-3818.[2]

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[1] The district court's order denying West's motion (DDE #79) is attached at Tab A. The district court's order providing the required certification under Section 1292(b) (DDE #85) is attached at Tab B.

[2] The *Cook* appeal is fully briefed and has been scheduled for oral argument on September 19, 2011.

As shown below, the district court's August 3, 2011 Order meets each of the Section 1292(b) criteria; and, indeed, it is exactly the type of order from which a permissive interlocutory appeal is appropriate. ***First***, the order involves "controlling questions of law"—questions of statutory construction and standing. ***Second***, there can be no debate that there is "substantial ground for difference of opinion" on these legal questions, as federal appellate and district courts around the country have reached conclusions different from the one the district court here reached. Indeed, the district court acknowledged that it went against the weight of authority on the controlling questions of law at the center of West's motion. (*See e.g.*, DDE #79, at 1, 4). ***Third***, because a decision in West's favor on appeal will result in dismissal of Plaintiff's lawsuit, just as it did in *Graczyk v. West Publ'g Corp.*, 2009 WL 5210846 (N.D. Ill. Dec. 23, 2009) (appeal pending in Seventh Circuit at No. 10-1193) and *Young v. West Publ'g Corp.*, 724 F. Supp.2d 1268 (S.D. Fla. 2010),[3] "an immediate appeal will materially advance the ultimate termination of the lawsuit." *See* 28 U.S.C. §1292(b).

[3] The plaintiffs in *Gracyk* and *Young* challenged the exact same practices Plaintiff here challenges. In both cases, the district court concluded that West's practices do not violate the DPPA and dismissed the plaintiffs' complaints.

Resolution of the important and dispositive statutory construction and standing questions at this juncture of the proceedings will serve Section 1292(b)'s objectives. Without immediate review of the district court's order, considerable public and private resources will be spent on further motions practice, the class notification process, and possibly trying a class action to a verdict, which—if Plaintiff prevails—ultimately should be reversed because the DPPA claim Plaintiff asserts is not viable. Considering the stakes involved, there is ample reason for this Court to take a careful look at the outcome-determinative legal issues now. West accordingly asks this Court to permit West to take an interlocutory appeal from the district court's August 3, 2011 Order pursuant to 28 U.S.C. § 1292(b).

II. QUESTIONS PRESENTED

1. Did the district court err in concluding that bulk obtainment of motor vehicle information for resale for DPPA-permitted uses constitutes a *per se* violation of the DPPA?

2. Did the district court err in concluding that a plaintiff has standing to sue under the DPPA absent any allegations of actual injury caused by misuse of the motor vehicle record information?

III. STATEMENT OF PERTINENT PROCEDURAL HISTORY

Plaintiff Marcy Johnson filed this putative class action on February 19, 2010 on behalf of herself and millions of licensed drivers and motor vehicle owners in 29 states and the District of Columbia. (DDE #1). On August 30, 2010, West moved for judgment on the pleadings, arguing that, as a matter of law, plaintiff's allegations did not state a cognizable claim under the DPPA. (DDE #30-31). On August 3, 2011, the district court denied West's motion. (DDE #79). West then asked the district court to certify that order for interlocutory appellate review pursuant to 28 U.S.C. 1292(b). (DDE #81).

A day before West filed its motion for Section 1292(b) certification, on August 9, 2011, the district court entered an order certifying a litigation class pursuant to Rule 23(b)(3). (DDE #80). On August 22, 2011, West filed a petition under Federal Rule of Civil Procedure 23(f) seeking an interlocutory appeal of the class certification order, docketed in this Court at No. 11-8019.

On August 24, 2011, the district court entered an order certifying that its order denying West's motion for judgment on the pleadings "involves a controlling question of law as to which there is substantial ground for difference of opinion and … an immediate appeal from the

order may materially advance the ultimate termination of the litigation." (DDE #85) (citing 28 U.S.C. §1292(b)). The district court further ordered that the case is "stayed … pending the parties' interlocutory appeal to the Eighth Circuit Court of Appeals." (*Id.)*

IV. THE DISTRICT COURT'S AUGUST 3, 2011 RULING

West obtains motor vehicle information in bulk in order to resell it to its subscribers who have DPPA-permitted uses for the information. Plaintiff does not allege that West misused any information in her motor vehicle records or that West disclosed the information to someone who did not have a permissible use for it. Instead, according to Plaintiff, West's obtainment of the information alone—without regard to the ultimate use of the data and without any allegation of misuse—results in a DPPA violation unless West itself first permissibly uses the record before reselling it. Invoking the liquidated damages language in the DPPA's civil remedies provision (18 U.S.C. § 2724), Plaintiff seeks $2,500 for each record obtained—which in this case, where the putative class numbers in the millions, could result in an award reaching as much as $2.5 trillion.[4]

[4] The district court certified Plaintiff's proposed class, which includes licensed drivers in 29 states and the District of Columbia. By Plaintiff's own estimation, the class consists of "millions of licensed drivers[.]"

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In its motion for judgment on the pleadings, West argued that the DPPA allows West to obtain and resell motor vehicle information for DPPA-permitted uses, even if West does not itself use the information. More specifically, West argued as follows: An examination of the plain language of the DPPA, as well as its legislative history, reveals that the Act serves two purposes: It protects the public from criminal conduct resulting from the uncontrolled disclosure of information in motor vehicle records, while at the same time ensuring that the information is accessible to those who have legitimate governmental and business needs for it.[5] The DPPA's provisions fulfill the Act's twin objectives by focusing on the

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(DDE #1, ¶¶ 11, 17). According to the United States Department of Transportation, more than 100 million licensed drivers live in these jurisdictions. USDOT Federal Highway Administration, "Licensed Total Drivers, by Age" (2006) (available at http://www.fhwa.dot.gov/policy/ohim/hs06/htm/dl22.htm) (last checked August 18, 2011).

[5] *See Thomas v. George, Hartz, Lundeen, Fulmer, Johnstone, King and Stevens, P.A.*, 525 F.3d 1107, 1109 (11th Cir. 2008) ("Congress made clear that not all obtainment, disclosure, or use of personal information from motor vehicle records is wrongful"); 139 Cong. Rec. S15745-01, S15763 (Nov. 16, 1993) (DPPA "strik[es] a critical balance" between drivers' privacy interests and the interests of businesses, governments, and consumers.) (statement of Sen. Boxer); 140 Cong. Rec. H2518-01, H2527 (Apr. 20, 1994) (DPPA denies access to personal information to a "narrow group of people that lack legitimate business [purposes]" for obtaining it.) (statement of Rep. Goss).

ultimate use to which the information is put. The Act expressly authorizes fourteen permitted uses for the information, 18 U.S.C. § 2721(b), allows resale or redisclosure of the information for these DPPA-permitted uses, 18 U.S.C. § 2721(c) (an "authorized recipient of personal information … may resell or redisclose the information only for a use permitted under subsection (b)"), and provides criminal penalties and civil remedies for obtainment, disclosure or use of the information for a purpose not permitted by the Act. 18 U.S.C. §§ 2722 and 2724.

Thus, West argued, when all of the DPPA's provisions are read together, as the rules of statutory construction require, it is clear that the DPPA permits bulk obtainment and resale of motor vehicle information for DPPA-permitted uses. As long as the obtainment is "for" a permitted use, and as long as the information is not subsequently disclosed or used "for" another purpose, the obtainment is authorized by the DPPA.

The district court rejected West's argument. It first framed the question before it as: "whether the [DPPA] permits a reseller to obtain driver's license information from a state when its sole purpose is to resell that information to third parties." (DDE #79 at 1). Departing from the conclusion reached by every other federal court that has addressed this question, the district court concluded that the DPPA does not permit such

obtainment, reasoning that "'authorized recipient' [means] any individual or entity, or their agent, that obtains personal information from DMV records for one of the permissible uses under section 2721(b)." (*Id.* at 21). Thus, the district court held, "West is not an authorized recipient as a matter of law based on its mere purported 'purpose of reselling information for permissible uses.'" (*Id.* at 22). Next, and again departing from the conclusion uniformly reached by other federal courts, the district court went on to conclude that the DPPA does not authorize bulk obtainment of motor vehicle record information. (*Id.* at 22-23). The district court acknowledged that its interpretation of the DPPA is the minority view. (*See e.g.* DDE #79 at 1, 4).

West also argued that it was entitled to judgment on the pleadings because Plaintiff, who did not allege that West misused the information it obtained or disclosed it to someone who did not have a permissible use for it, had not alleged the type of concrete injury-in-fact required to establish standing, which "is an essential ... part of the case-or-controversy requirement of Article III." *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). As West further explained, the DPPA's civil remedies provision, which authorizes an award of liquidated damages, does not alter this outcome. The DPPA provides that "[t]he court may award –

(1) *actual* damages, but not less than liquidated damages in the amount of $2,500[.]" 18 U.S.C. § 2724(b) (emphasis added). That provision does not say that the court may award the plaintiff "actual damages *or* the liquidated sum."[6] And, it is well-settled that liquidated damages provide a means of establishing the *amount* of damages to be recovered—not a substitute for proof of actual harm.[7] Thus, the availability of liquidated damages does not relieve a plaintiff of the burden to establish some *actual* injury or loss, but rather simply sets a floor on the *amount* of damages that may be awarded if injury is in fact proven. In short, the recovery contemplated in section 2724(b) is in the form of *damages*, since the provision expressly uses that word. Without proof of misuse of Plaintiff's motor vehicle information, there can be no actual damages—and none has been alleged here.

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[6] *See Doe v. Chao*, 540 U.S. 614, 625 (2004) (construing the Privacy Act to condition recovery on proof of actual damages where remedies provision provides for award of "actual damages sustained …, but in no case shall a person entitled to recovery receive less than the sum of $1,000," explaining that there is nothing "peculiar in offering some guaranteed damages, as a form of presumed damages not requiring proof of amount, only to those plaintiffs who can demonstrate actual damages").

[7] *See* Restatement (First) of Contracts § 339 cmt. e (1932) (liquidated damages clause is unenforceable "when in fact the breach causes no damages"); Restatement (Second) of Contracts § 356 cmt. b, illus. 4 (1981).

This district court disagreed, concluding that Plaintiff's allegation relating to West's allegedly improper obtainment of the information amounted to an allegation of invasion of privacy that was sufficient to aver a concrete injury-in-fact. (DDE #70 at 37-38).

V. THE DISTRICT COURT'S AUGUST 3, 2011 ORDER MEETS EACH OF SECTION 1292(b)'S CRITERIA FOR INTERLOCUTORY APPELLATE REVIEW

The Interlocutory Appeals Act provides for an appeal of an order not otherwise appealable where, as here, the district court is of the opinion that the order "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation …." 28 U.S.C. § 1292(b); *White v. Nix*, 43 F.3d 374, 377 (8th Cir. 1994).

Courts routinely take into account practical considerations when deciding whether to allow an appeal under Section 1292(b). C. Wright, A. Miller & G. Cooper, 16 Federal Practice & Procedure § 3930 (2d ed.) ("Wright, Miller & Cooper"). Rulings that depend more on the resolution of questions of law than on questions of fact are particularly appropriate for permissive interlocutory appeals. *See S.B.L. ex rel. T.B. v. Evans*, 80 F.3d 307, 311 (8th Cir. 1996); Wright, Miller & Cooper § 3930.

Accordingly, where the viability of a plaintiff's cause of action depends on the construction of a statute, interlocutory appellate review under Section 1292(b) is warranted. *Paschall v. Kansas City Star Co.*, 605 F.2d 403, 407 (8th Cir. 1979) (question of whether defendant's actions "violate[d] section 2 of the Sherman Act" was question of law appropriate for Section 1292(b) review); *S.B.L.*, 80 F.3d at 311 (same with regard to standard for institutional liability under Title IX). Moreover, an interlocutory appeal under Section 1292(b) is warranted "where a decision on appeal may avoid protracted and expensive litigation." *White*, 43 F.3d at 376; *see also Katz v. Carte Blanche Corp.*, 496 F.2d 747, 756 (3d Cir. 1974), *cert. denied*, 419 U.S. 885 (1974) (courts should be concerned with avoiding harm to a party from a possibly erroneous interlocutory order and avoiding possibly wasted litigation expense and time).

Courts of Appeal should accord great weight to a district court's determination that Section 1292(b)'s criteria for an interlocutory appeal are satisfied, because the district court is most familiar with the circumstances of the case and therefore is in the best position to assess the need for an immediate appeal. Wright, Miller & Cooper, § 3929. The district court got it right when it concluded that the August 3, 2011 Order meets all of the criteria for interlocutory appellate review—and, as shown below, there

is every reason for this Court to give great weight to that determination and permit West to take an immediate appeal from the Order.

A. The Order Rests On Controlling Questions Of Law

Section 1292(b)'s first criterion—whether the district court's August 3, 2011 Order involves controlling questions of law—clearly is met. To begin, the order presents two purely legal questions: (1) whether the DPPA allows West to obtain in bulk and resell motor vehicle information for DPPA-permitted uses and (2) whether plaintiffs who have not alleged actual misuse of their motor vehicle information have standing to sue under the DPPA. *See Paschall*, 605 F.2d at 407; *S.B.L.*, 80 F.3d at 311. The statutory construction and standing issues do not turn on issues of fact and so these legal questions "can be decided quickly and cleanly without having to study the record." J.W. Moore, 19 Moore's Federal Practice § 203.31[2] (3d ed.) ("Moore's").

The legal issues in controversy, moreover, are controlling. A leading commentator has explained that "if resolution of the question being challenged on appeal will terminate the action in the district court, it is clearly controlling." Moore's, § 203.31[2]. Plainly, if this Court reverses the August 3, 2011 Order on either the statutory construction question or standing question, Plaintiff's complaint must be dismissed and

the litigation will be disposed of altogether. An appeal at this juncture will avoid the expenditure of public and private resources in trying this class action to a verdict which ultimately may be reversed. Wright, Miller & Cooper § 3930 (noting that "better view" is that "a question is controlling … if interlocutory reversal might save time for the district court, and time and expense for the litigants").

B. There Are Substantial Grounds For Differences Of Opinion On The Questions Of Law Decided In The Order

Section 1292(b)'s second criterion is met, as there is substantial ground for a difference of opinion on the controlling legal questions addressed in the August 3, 2011 Order. Indeed, one need not speculate about whether another court reasonably could come to a conclusion different from the ones the district court reached on the question of (1) whether the DPPA authorizes obtainment of motor vehicle record information for resale for DPPA-permitted use (rather than for direct use); and (2) whether the DPPA authorizes bulk obtainment of motor vehicle record information. Several federal district and appellate courts already have done so. *See White*, 43 F.3d at 378 (the existence of "a sufficient number of conflicting and contradictory opinions" shows substantial grounds for differences of opinion).

The district court below is the only federal court to have concluded that a DPPA class action complaint can move forward when based only on allegations that the defendant obtained motor vehicle information in bulk for resale to others who have specific DPPA-permitted uses. No fewer than seven other federal courts uniformly have concluded that the phrase "authorized recipient" includes companies that obtain motor vehicle information for resale for DPPA-permitted uses, instead of for their own direct use, and that the Act permits bulk obtainment of motor vehicle record information. *Taylor v. Acxiom Corp.*, 612 F.3d 325, 338 (5th Cir. 2010), *cert. denied*, 131 S.Ct. 908 (2011) ("[T]he only reasonable construction of 'authorized recipient' requires no actual use. Instead, an authorized recipient is … [one who] resell[s] to individuals for one or more of the specific purposes under section 2721(b)."); *id.* at 335-36 (DPPA permits bulk obtainment); *Roth v. Guzman*, --- F.3d ---, 2011 WL 2306224, at *9-10 (6th Cir. June 13, 2011) (DPPA authorizes bulk obtainment of motor vehicle information; "Plaintiffs … do not offer any authority or persuasive argument for concluding that § 2721(b)(3) clearly and unambiguously limits disclosure of personal information to one individual at a time"); *see also id.* at *12 (Clay, J., dissenting, but agreeing that "nothing in the Driver's Privacy Protection Act … prohibits

bulk disclosure of personal information contained in drivers' records"); *Howard v. Criminal Info. Servs., Inc.*, --- F.3d ---, 2011 WL 3559940, at *2-4 (9th Cir. Aug. 15, 2011) (holding that the DPPA authorizes bulk obtainment); *Cook*, 756 F. Supp.2d at 1109 ("the language of the statute and the legislative history indicate that there is no proscription against bulk obtainment of driver records;" under the DPPA's language, "a reseller does not need to have its own permissible use"); *Graczyk*, 2009 WL 5210846, at *4-5 (appeal pending in Seventh Circuit) ("Section 2721(c) unambiguously allows for resale or redisclosure of personal information for uses permitted under section 2721(b) …. While it may be conceivable that Congress could have deliberately intended 'authorized recipient' to mean 'authorized user,' this interpretation becomes untenable when the overall statutory scheme is considered."); *Young*, 724 F. Supp.2d at 1271 ("The Act does not require an independent permissible use for the entity that receives the information in order to qualify as an authorized recipient under the Act. … The only requirement is that the reseller, as an authorized recipient, sell the information to an entity with a permissible use."); *Rodriguez v. Ampco Parking Sys.*, 2010 WL 3061600, at *2 (W.D. Wash. Aug. 2, 2010), *aff'd*, *Howard*, 2011 WL 3559940 ("Plaintiffs fail to provide sufficient explanation … as to why the acquisition and retention

of bulk data is improper under the DPPA. No such prohibition appears in the plain text of the statute."); *Russell v. Choicepoint Servs., Inc.*, 302 F. Supp.2d 654, 664 (E.D. La. 2004) ("[t]he plain language of the DPPA permits a company to obtain drivers' personal information" for no other purpose than to "subsequently resell that information to third parties with a permissible use").

The district court here saw the matter differently and, in so doing, created a divergence of opinion on fundamental questions regarding the interpretation of the DPPA. (*See e.g* Order at 1 ("The majority of courts which have decided these questions have concluded that the DPPA permits [obtainment for resale for DPPA-permitted uses]. The Court disagrees."); *id.* at 4 ("The majority of courts reading [the DPPA] have concluded that [it] permit[s] wholesale reseller to obtain in bulk every driver's personal information so long as there is no evidence of specific misuse. … [A] reseller is not limited to obtaining personal information only for a specific customer qualified to use it by the DPPA, nor need the reseller itself have right to use the information under one of the fourteen exceptions to the DPPA's rule of nondisclosure.") (citing *Taylor*, 612 F.3d 325).

There also are substantial grounds for a difference of opinion on the constitutional standing question. The district concluded that Plaintiff had

standing because the alleged improper obtainment of her information alone—even without allegations of actual misuse of the information—was a sufficiently concrete injury-in-fact to satisfy Article III's standing requirements. (Order at 37-38). Some courts agree. *See Taylor*, 612 F.3d at 339-40, n.15; *Cook*, 756 F. Supp.2d at 1107; *Roth v. Guzman*, No. 1:09-cv-00253 (DDE # 43) (S.D. Ohio March 31, 2010). Yet other courts disagree. *See Russell*, 302 F. Supp.2d at 670-71 (finding that plaintiffs had not shown "injury-in-fact" and thus did not have standing to bring the DPPA claim; granting defendant's motion to dismiss because [e]xcept for the redisclosure of DMV information to their attorney, plaintiffs have presented no evidence that their personal information was either used or resold by defendant in violation of the DPPA"); *Young*, 724 F. Supp.2d at 1281; *Graczyk*, 2009 WL 5210846 at *6; *Rodriguez*, 2010 WL 3061600 at *3.[8]

[8] Although two federal appellate courts have held that the DPPA does not require proof of actual damages, *Kehoe v. Fidelity Fed. Bank & Trust*, 421 F.3d 1209 (11th Cir. 2005) and *Pichler v. UNTE*, 542 F.3d 380 (3d Cir. 2008), this Court has never addressed this important question. Moreover, two justices of the United States Supreme Court have observed that standing to sue under the DPPA is an important issue and one that at the right time will be a good candidate for Supreme Court review. *Fidelity Federal Bank & Trust v. Kehoe*, 547 U.S. 1051 (2006) (Alito and Scalia, J.J., concurring in denial of certiorari) (noting "whether 'actual damages'

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In short, the required substantial grounds for a difference of opinion on the issues addressed in the August 3, 2011 Order clearly is established by the decisions of other federal courts. *See White*, 43 F.3d at 378.

C. An Immediate Appeal From The Order May Materially Advance The Ultimate Termination Of The Litigation

Lastly, Section 1292(b)'s third criterion is met. "The requirement that an appeal may materially advance the ultimate termination of the litigation is closely tied to the requirement that the order involve a controlling question of law." Wright, Miller, & Cooper § 3930. Whether an appeal may materially advance the ultimate termination of the litigation is not "a difficult requirement to understand. It means that resolution of a controlling legal question would serve to avoid a trial or otherwise substantially shorten the litigation." *McFarlin v. Conseco Servs.*, 381 F.3d 1251, 1259 (11th Cir. 2004) (citing Wright, Miller, & Cooper).

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must be shown before a plaintiff may recover" under the DPPA is "an important question of statutory construction" and that the "enormous potential liability, which turns on a question of federal statutory interpretation, is a strong factor in deciding whether to grant certiorari," but ultimately concluding that certiorari would be "premature" because other DPPA issues "remained open" in the case). Finally, the standing question implicates subject matter jurisdiction, and a leading commentator has observed that "[a]mong the categories of rulings that may be obviously suited for interlocutory appeal … are those rejecting … challenges to subject matter jurisdiction." Wright, Miller & Cooper, § 3931.

Because resolution in West's favor on either the statutory construction question or the standing question will result in dismissal of Plaintiff's complaint, this requirement easily is satisfied.

Moreover, as noted, the analysis under Section 1292(b) should take into account practical considerations, including whether an interlocutory appeal will avoid imposing unnecessary burdens on the parties and the judicial system. Here, the practical benefits of an immediate appeal are apparent and compelling. This is a complex class action. The parties are set to engage in further discovery and motions practice, with the class notification process and possibly a trial following. All of this will have been unnecessary if, as the decisions of other federal courts indicate, Plaintiff has not stated a viable claim under the DPPA.[9]

[9] In her opposition to West's Section 1292(b) petition filed in the district court, Plaintiff argued that "[t]his case is ready to proceed to the summary judgment phase at the completion of some depositions that were previously stayed …. Thus, an appeal now will not likely avoid expensive and protracted litigation …." (DDE #84). Plaintiff is wrong for a number of reasons, most notably because she ignores the costs and expense associated with the class notification process and the cost of trial.

VI. CONCLUSION AND RELIEF REQUESTED

The district court ruling on West's motion for judgment on the pleadings raises significant legal questions regarding the proper interpretation of the DPPA on which there is a substantial ground for difference of opinion—specifically whether the Act authorizes bulk obtainment of motor vehicle records for resale for DPPA-permitted uses and whether a plaintiff must allege an actual injury (*i.e.*, misuse of information) in order to have standing to sue. A decision in West's favor on either of these legal questions would bring this litigation to an end. Consequently, the difference of opinion on these issues should be settled before further costly and expensive proceedings in this case.

DATED: August 29, 2011

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Civil Procedure 5 and 32, I certify that this petition is proportionally spaced in CG Times, has a typeface of 14 points, and does not exceed twenty pages. A digital version of the petition has been submitted to the court in Portable Document Format in compliance with Circuit Rule 28(d). The submitted digital version of the brief was scanned for viruses and is virus-free.

DATED: August 29 2011

/s/ Kim M. Watterson
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CERTIFICATE OF SERVICE

I hereby certify that on August 29th 2011, I served the foregoing West Publishing Corporation's Petition For An Interlocutory Appeal Pursuant To 28 U.S.C. § 1292(b) via first class mail, postage prepaid, to the following:

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